

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DISTRICT COURT OF GUAM
JAN - 8 2007 *rs*
MARY L.M. MORAN
CLERK OF COURT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAX S. MENDIOLA,

Defendant - Appellant.

No. 06-10130

D.C. No. CR-04-00056-LAB

JUDGMENT

Appeal from the United States District Court for the District Of Guam
(Hagatna).

This cause came on to be heard on the Transcript of the Record from the
United States District Court for the District Of Guam (Hagatna) and was duly
submitted.

On consideration whereof, it is now here ordered and adjudged by this
Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 12/12/06

A TRUE COPY
CATHY A. CATTERSON
CLERK OF COURT
ATTEST

[Signature]
JAN 8 3 2007
by: _____
Deputy Clerk

DEC 12 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**NOT FOR PUBLICATION**

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UNITED STATES OF AMERICA,

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D.C. No. CR-04-00056-LAB

MEMORANDUM*

Appeal from the District Court of Guam
Larry A. Burns, District Judge, Presiding

Submitted December 4, 2006**

Before: GOODWIN, RYMER, and FISHER, Circuit Judges

Max S. Mendiola appeals from the 90-month sentence imposed following his plea of guilty to attempted possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Mendiola contends that the district court miscalculated his base offense level because it did not properly distinguish between the two isomers of methamphetamine. Because the Guidelines provide that, for methamphetamine not in a mixture, the base offense level depends solely on the weight of the drug and not on the isomer, *see* U.S.S.G. § 2D1.1(c) note (B), we conclude the district court correctly calculated Mendiola's base offense level.

Mendiola also contends that the district court improperly sentenced him for drugs found in his apartment that were not related to the shipment mentioned both in the indictment and at the change-of-plea hearing. We reject this contention. *See United States v. Watts*, 519 U.S. 148, 155 (1997) (per curiam) (holding that the district court may take into account relevant conduct at sentencing); *see also United States v. Booker*, 543 U.S. 220, 240-41 (2005) (observing that the holding in *Watts* survived the decision in *Blakely v. Washington*, 542 U.S. 296 (2004)).

AFFIRMED.

A TRUE COPY
CATHY A. CATTERSON
CLERK OF COURT
ATTEST

JAN 03 2007

by: _____

Deputy Clerk